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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

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8 MICHAEL ROBERT PERSON,

9 Plaintiff,

10 vs.

11 KELLER,

12 Defendant.

Case No. 2:22-cv-00027-JAD-VCF

ORDER

APPLICATION TO PROCEED IN FORMA PAUPERIS
(EFC No. 1) AND COMPLAINT (ECF No. 1-1)

13 Pro se plaintiff Michael Robert Person filed an application to proceed in forma pauperis (ECF
14 No. 1) and a complaint (ECF No. 1-1). I deny Person's in forma pauperis application without prejudice.

15 **DISCUSSION**

16 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or
17 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to
18 pay such fees or give security therefor." If the plaintiff is a "prisoner" as defined by 28 U.S.C. §
19 1915(h), as amended by the Prison Litigation Reform Act ("PLRA"), he remains obligated to pay the
20 entire fee in installments, regardless of whether his action is ultimately dismissed. See 28 U.S.C. §
21 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

22 Under the PLRA, a prisoner seeking leave to proceed IFP must submit a "certified copy of the
23 trust fund account statement (or institutional equivalent) for the prisoner for the six-month period
24 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
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1 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial
2 payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
3 average monthly balance in the account for the past six months, whichever is greater, unless the prisoner
4 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the
5 prisoner must collect subsequent payments, assessed at 20% of the preceding month's income, in any
6 month in which the prisoner's account exceeds \$10, and forward those payments to the Court until the
7 entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

8 Plaintiff is currently incarcerated in High Desert State Prison. (ECF No. 1 at 3). Plaintiff filed a
9 declaration, but he did not submit a certified copy of the trust fund account statement (or institutional
10 equivalent), obtained from the appropriate official of the High Desert State Prison, for the 6-month
11 period immediately preceding the filing of his complaint. I deny plaintiffs' application to proceed *in*
12 *forma pauperis* without prejudice.

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14 ACCORDINGLY,

15 I ORDER that plaintiff Person's application to proceed in forma pauperis (ECF No. 1) is
16 DENIED without prejudice.

17 I FURTHER ORDER that by Wednesday, March 2, 2022, plaintiff must either (1) file an
18 application to proceed in forma pauperis that includes his trust account statement or (2) plaintiff must
19 pay the full fee for filing a civil action. I warn plaintiff that failure to timely comply with this Order may
20 result in dismissal or administrative closure of this case.

21 **NOTICE**

22 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
23 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
24 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
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1 may determine that an appeal has been waived due to the failure to file objections within the specified
2 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
3 objections within the specified time and (2) failure to properly address and brief the objectionable issues
4 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
5 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
6 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, plaintiffs must immediately file written
7 notification with the court of any change of address. The notification must include proof of service upon
8 each opposing party's attorney, or upon the opposing party if the party is unrepresented by counsel.

9 **Failure to comply with this rule may result in dismissal of the action.**

10 IT IS SO ORDERED.

11 DATED this 31st day of January 2022.

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13 CAM FERENBACH
14 UNITED STATES MAGISTRATE JUDGE
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